

Charges for automated information retrieval or data processing are not taxable under the Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.100(c). (This is a GIL).

December 15, 2000

Dear XXXXXX:

This letter is in response to your letter dated October 26, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please review the following products and services and let me know the applicable taxes that should be charged and remitted to the State of Illinois.

Customers use their personal computer and modem to dial into a database. The computer is located in CITY/STATE. Customers would be required to sign a twelve month Service Agreement which describes their level of service ranging from a guaranteed 20 hours per month package to a monthly fee paid for the right to access the system with each minute of access time billed at a per minute rate. Time in excess of the guaranteed 20 hours would be billed by the minute. Customers may search any of the data in the system to view the information, print a hard copy of the information presented, or download the information to a file for future internal use.

The database consists of real property information on all parcels of property in Northern Illinois.

A setup and training fee would be charged to new customers for loading the communication software and training the customer who will be responsible for using the system.

Another service that is provided is extracting information from the database in bulk and selling it via e-mail, tape or cartridge to customers for resale.

Finally, if we were to move the products to the Internet, I would like to know the applicable sales tax if different from your findings above.

Please direct any literature or findings to my attention at ADDRESS. I appreciate your help in this matter.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101, enclosed. Transactions which do not involve the sale of tangible personal property at retail are not subject to the Retailers' Occupation Tax.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever. A retailer may provide services to customers that are not provided in connection with originating or receiving telecommunications. If such services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for such services are disaggregated and separately identified from other charges, the charges need not be included in "gross charges".

Generally, charges for E-mail services, bulletin board services, or Internet access are not subject to tax under the Retailers' Occupation or Use Tax. These taxes are imposed only upon the retail sale, or use, of tangible personal property. However, the Telecommunications Excise Tax may apply.

As you can see from 86 Ill. Adm. Code 495.100(c), charges for automated information retrieval or data processing are not taxable. The regulation contemplates that charges for access to an on-line computer database fall within this category. As the regulation indicates, charges for the inquiry or access are generally not taxable, but charges, if any, for transmission of the data are generally taxable. If retailers provide both transmission and data processing services, the charges for each must be separately disaggregated and identified in the books and records of the retailers. If such charges are not disaggregated in this manner, then all charges are taxable.

Please note that information that is downloaded is generally not taxable because it is intangible. If you extract and transfer such information in a tangible format, such as on tape or disk, however, such transfer is taxable as either a Retailers' Occupation Tax or a Service Occupation Tax transaction depending on whether the item is customized. When you sell an item standard enough to be stocked for sale to the public generally, i.e., one that is not customized to the specifications of a particular purchaser, the entire charge for the product is subject to Retailers' Occupation Tax. If the item, however, were customized for a particular purchaser, it would be subject to the Service Occupation Tax.

It was not clear from the information in your letter if when you provided services over the Internet whether you would be an Internet Service Provider. Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay all transmission costs to their telecommunications providers. The single monthly fee charged by such

retailers, which often represents a flat charge for a package of items as diverse as E-mail services and access to daily news summaries, is generally not subject to the Telecommunications Excise Tax under these circumstances.

However, please note that persons providing customers with the internet access described above, but who also provide customers the use of a 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers will incur Telecommunications Excise Tax on charges made for such 1-800 services.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier

providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.